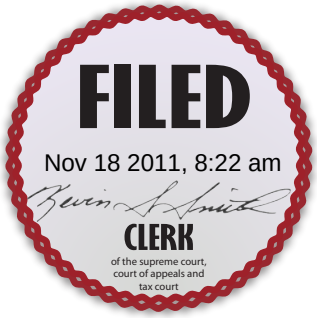

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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL RATLIFF,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1104-CR-127
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0801-FB-1

November 18, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Michael Ratliff ("Ratliff") appeals the seven-year executed sentence imposed following his conviction for possession of a controlled substance,[1] as a Class C felony, under a plea agreement. Ratliff presents the following issue for review: whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On January 9, 2008, the State charged Ratliff with three counts of dealing in a schedule II controlled substance, each as a Class B felony, and one count of dealing in marijuana, a Class A misdemeanor. The State twice amended the information, adding a habitual offender count and a count for possession of a controlled substance as a Class C felony.

In August 2010, Ratliff and the State submitted a plea agreement to the trial court. Thereafter, the trial court accepted Ratliff's plea of guilty to possession of a controlled substance as a Class C felony, and in exchange, the State dismissed the remaining counts. Pursuant to the plea agreement, the parties were free to argue their positions as to sentencing.

The trial court held a sentencing hearing on March 2, 2011, at which counsel for both Ratliff and the State made argument, and Ratliff made a statement. The trial court found as aggravating circumstances, Ratliff's history of juvenile adjudications and prior convictions, and a violation of the conditions of pretrial release due to his charge and

[1] *See* Ind. Code § 35-48-4-7(a)(2)(A).

conviction in the current case. As mitigating circumstances, the trial court recognized that imprisonment will result in undue hardship to Ratliff's dependents, his plea of guilty, and that he has diabetes. The trial court sentenced Ratliff to seven years executed in the Department of Correction ("DOC") and ordered that his sentence be served consecutive to his sentence in three other causes. Ratliff was also ordered to pay fees and court costs. Ratliff now appeals his sentence.

DISCUSSION AND DECISION

Ratliff does not contend that the trial court overlooked any mitigating factors or weighed any inappropriate aggravating factors. Ratliff's sole argument on appeal is that his seven-year executed sentence is inappropriate in light of the nature of the offense and his character. He contends that "[w]hile [he] has a prior criminal record, he is a changed man." *Appellant's Br.* at 5.

"This court has authority to revise a sentence 'if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.'" *Spitler v. State*, 908 N.E.2d 694, 696 (Ind. Ct. App. 2009) (quoting Ind. Appellate Rule 7(B)), *trans. denied*. "The principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "Although Indiana Appellate Rule 7(B) does not require us to be 'extremely' deferential to a trial court's sentencing decision, we still must give due consideration to that decision." *Patterson v. State*, 909

N.E.2d 1058, 1062-63 (Ind. Ct. App. 2009) (quoting *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007)). We understand and recognize the unique perspective a trial court brings to its sentencing decisions. *Id*. at 1063. The defendant bears the burden of persuading this court that his sentence is inappropriate. *Id*.

The record before us provides little detail as to the nature of the offense. Assuming without deciding that the nature of the offense was unremarkable, we find Ratliff's character more than sufficient to justify the seven-year executed sentence. During the sentencing hearing, Ratliff's attorney urged the trial court to impose a sentence of eight years on probation on the basis that Ratliff has children that depend on him, he has enrolled in school, he has diabetes and other health issues, and he has the support of his girlfriend. *Tr*. at 28-30. The State responded with a litany of reasons why an eight-year executed sentence would be appropriate. After Ratliff spoke on his own behalf, the trial court made the following statements:

> Mr. Ratliff, there's an old expression that says, what you do speaks so loudly I can't hear a word you say. It's very true in this case. Your criminal history is horrendous. I don't believe you've changed one bit. Okay? You have done this dance before. You've made similar statements before this bench and you have continued to commit crime. Moreover, you had a child and you had your girlfriend when you were committing crimes. The only thing that's different from what I can see is that now you have another baby on the way. But your criminal history is one of the worse that I have seen. It is terrible. And the State's comments are accurate and that's just a part, the State didn't go through the whole history. We'd be here quite a while if I allowed that. Now, I am required by statute to consider a person's criminal record. I am not free to ignore it as a matter of law and I will not ignore it in this case.
>
> Just to summarize this on the record: Four juvenile adjudications; twenty misdemeanor convictions; four felony convictions; eleven times on probation; sentenced to jail or prison seventeen times, including parole

> violations and juvenile offenses; convicted by a jury of criminal recklessness in 1994; was sentenced to thirty months in DOC; found guilty of home invasion, aggravated battery in Illinois for which you received twelve years, paroled, violated parole, sent back to DOC to serve the remainder of the sentence; in 2005 you were back before me for possession of a controlled substance, you received fifteen months [in] DOC; and you currently have three cases still pending in Lake County, Division III.
>
> The aggravating factors in this case far outweigh any mitigating factors. I do take into account your health situation, as well as the issues with the dependents, but that's not going to keep you out of prison.

Tr. at 36-38.

The sentencing range for a Class C felony is from two to eight years, with the advisory being four years. Ind. Code § 35-50-2-6. Here, Ratliff was initially charged with three Class B felonies and one Class A misdemeanor. Those charges were dropped as part of the plea agreement under which Ratliff pleaded guilty to one Class C felony. A seven-year sentence is within the range allowed for a Class C felony. Based on the nature of the offense and the character of the offender, we do not find Ratliff's sentence inappropriate.

Affirmed.

BAKER, J., and BROWN, J., concur.